Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1306

EASTERN PHOTOGRAPHIC LABORATORIES, INC., AND HEART OF AMERICA PORTRAITS, INC.,
Petitioners,

vs.

ROBERTA BRAUNSTEIN,
Respondent.

PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Eastern Photographic Laboratories, Inc., and Heart of America Portraits, Inc. (hereinafter collectively referred to as "Eastern") file the following supplemental brief in support of Eastern's pending petition for a writ of certiorari on the sole issue of whether, as respondent contends, the present appeal is moot.

The Appeal Is Not Moot

Notwithstanding the fact that on March 21, 1979, the District Court ordered that notice be mailed to other present and former Eastern employees, it is clear that the present appeal is not moot.

On April 2, 1979, plaintiff filed the annexed motion to compel, thereby once again seeking the District Court's assistance in effectuating the issuance of notice to other present and former Eastern employees. See plaintiff's interrogatories dated July 5, 1978, Appendix p. 1a and plaintiff's motion to compel dated April 2, 1979, Appendix p. 3a. The filing of the present motion makes it abundantly clear that (1) there remains a substantial controversy between the parties over the appropriateness of notifying potential class members of the pendency of this section 16(b) Fair Labor Standards Act action, and (2) the District Court continues to be called upon to exercise its powers to effectuate the giving of notice in this section 16(b) Fair Labor Standards Act action. Moreover, the filing of the present motion demonstrates that this is an issue "capable of repetition, yet evading review." *Southern Pacific Terminal Co.* v. *I.C.C.*, 219 U.S. 498, 515 (1911); *Roe* v. *Wade*, 410 U.S. 113, 125 (1973). *See Sosna* v. *Iowa*, 419 U.S. 393, 399 (1975); *cf. Weinstein* v. *Bradford*, 423 U.S. 147, 148-49 (1975); *Preiser* v. *Newkirk*, 422 U.S. 395, 401-03 (1975). It is clear, therefore, that the issue of whether or not the District Court has the power to advise potential litigants of the pendency of the present action and of their right to join such action is not moot.

Respectfully submitted,

SHAUN S. SULLIVAN,
Attorney for Petitioners.

Of Counsel:

WILLIAM J. DOYLE
MARSHALL B. BABSON

April 9, 1979

APPENDIX

Plaintiff's Initial Request for Interrogatories

(Filed—July 9, 1978)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B78-252

ROBERTA BRAUNSTEIN,

Plaintiff,

vs.

EASTERN PHOTOGRAPHIC LABORATORIES, INC.
HEART OF AMERICA PORTRAITS, INC.,

Defendants.

The Plaintiff seeks and requests the following information of the Defendants:

"IDENTIFY" means identification of name, all home or business addresses known to you, including any alternate or forwarding address and last known address, social security number, and telephone numbers.

1. Identify each person presently employed by you as of the date of the Answers to these Interrogatories, giving dates of employment (including initial orientation and training).
2. Identify each person employed by you on or after July 1, 1975 but not presently employed by you (as of the date of Answers to Interrogatories), giving

Plaintiff's Initial Request for Interrogatories

beginning and ending dates of employment, starting with initial orientation and training.

PLAINTIFF

By: A. REYNOLDS GORDON, Attorney
Gordon & Hiller
855 Main St., Suite 945
Bridgeport, CT 06604

July 5, 1978.

Motion to Compel

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B78-252

ROBERTA BRAUNSTEIN,

Plaintiff,

vs.

EASTERN PHOTOGRAPHIC LABORATORIES, INC., et al.,

Defendants.

The Plaintiff in the above entitled matter respectfully represents:

1. Under date of July 5, 1978 the Plaintiff filed her initial request for interrogatories.

2. On said date the Court granted (without prejudice) the Plaintiff's motion to shorten the time to answer said interrogatories to ten days.

3. On July 24, 1978 the Defendants objected to said request for interrogatories, the objections were overruled on July 27, 1978.

4. On July 21, 1978 the Defendants provided lists of names and addresses of employees.

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5. The Defendants did not provide any answers under oath as required by Federal Rules of Civil Procedure, and the list provided did not contain dates of employment, alternate addresses, telephone numbers and social security numbers, all as required on said initial request for interrogatories, and some of the zip codes were unstated.

6. The Plaintiff sent out the Court-authorized notices to 463 employees on March 21, 1979.

7. As of April 2, 1979 87 notice envelopes have been returned to the Court Clerk's office for lack of proper address.

8. The Defendants have not brought the list of employees up to date.

THEREFORE the Plaintiff respectfully requests that the Defendants be COMPELLED to provide:

1. As to each employee whose notice envelope was returned by the Postal authorities to the Clerk of this Court:

a. An oath by the Personnel Manager that the address given is accurate and that there is no alternate or forwarding address.

b. The employee's social security number.

c. Telephone numbers.

d. Dates of employment.

2. As to each employee whose consent is filed, the dates of employment of that employee, giving beginning and ending dates of employment, starting with initial orientation and training.

Motion to Compel

3. Full answers to the Initial Request for Interrogatories as to each photographer employed since July 20, 1978 and up to the present time.

THE PLAINTIFF

By: A. REYNOLDS GORDON
Of: Gordon & Hiller
855 Main St., Suite 945
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CERTIFICATION

This is to certify that a copy of the foregoing has been mailed postage prepaid to all counsel of record.

A. REYNOLDS GORDON

April 2, 1979.